INJUNCTIONS — NATURE AND SCOPE OF THE REMEDY — INJUNCTION AGAINST CONTINUING TRESPASS WHERE DAMAGES ARE NOMINAL. — The defendant, the owner of a water-power plant, built a dam in such a way that the level of the stream was raised as it flowed through a chasm owned by the plaintiff. The property encroached upon was of no possible use to the owner, and there had been a judicial determination that the damages were only nominal. The injunction sought by the plaintiff against the continuance of the trespass would cause serious inconvenience to the defendant and to the public. *Held*, that the plaintiff is not entitled to injunctive relief. *McCann* v. *Chasm Power Co.*, 211 N. Y. 301, 105 N. E. 416.

The inadequacy of the legal remedy and the danger of a multiplicity of suits establishes the jurisdiction of equity to restrain a continuing trespass. *Goodson* v. *Richardson*, L. R. 9 Ch. App. 221; *Delaware, L. & W. R. Co.* v. *Breckenridge*, 57 N. J. Eq. 154, 41 Atl. 966. But whether it will be exercised where the damages are only nominal, and the resulting inconvenience to the defendant great, has caused much diversity of judicial opinion. The English authorities argue that the owner's damages from a permanent invasion of his land are of necessity substantial, because of his present power to exact a high price from the trespasser for the coveted privilege, and the danger of the ultimate acquisition of the right by adverse user. *Goodson* v. *Richardson*, *supra*; *Powell* v. *Aiken*, 4 K. & J. 343. But the adverse user is easily interrupted and the policy of the principal case seems on the whole more equitable than the rigid rule of the English courts. The danger that it may encourage wilful appropriation of another's land undoubtedly exists. But this seems outweighed by the danger that by granting an injunction a court of equity might be furnishing the owner with a weapon for extorting an unconscionable price for the privilege. Weight should be given also to the consideration that here public interest is against granting an injunction. *Conger* v. *New York, etc. R. Co.*, 120 N. Y. 29. On the balance of convenience, therefore, equity seems justified in refusing its extraordinary relief. *Bassett* v. *Salisbury Manufacturing Co.*, 47 N. H. 426; *Crescent Mining Co.* v. *Silver King Mining Co.*, 17 Utah 444, 54 Pac. 244; *McCullough* v. *Denver*, 39 Fed. 307. *Contra*, *Richards* v. *Dower*, 64 Cal. 62, 28 Pac. 113.

INSURANCE — ACCIDENT INSURANCE — MEANING OF "ACCIDENTAL" IN THE POLICY. — The insured saw a man accidentally burned to death, and was so affected that he died shortly afterward of apoplexy, produced either by the intense excitement of witnessing the fire or by a fall caused by fainting from such excitement, and perhaps by both. The beneficiary now sues upon an insurance policy payable in the event of the "accidental death" of the insured. *Held*, that the trier of the facts could reasonably find the death to have been accidental. *International Traveler's Ass'n* v. *Branum*, 169 S. W. 389 (Tex. Civ. App.).

The word "accident" in insurance policies has been productive of frequent litigation. Its meaning is purely a question of fact, determined by what an ordinary reasonable man would consider an accident in the popular sense. *United States Mutual Accident Ass'n* v. *Barry*, 131 U. S. 100, 121. See 24 HARV. L. REV. 221. Death from disease, of course, is ordinarily not an accident. *Sinclair* v. *Maritime, etc. Ins. Co.*, 3 E. & E. 478. But when the disease is itself directly attributable to a previous accident, as where a fall produces apoplexy, the death is justly considered accidental. *National Benefit Ass'n* v. *Grauman*, 107 Ind. 288. This authority would probably cover the principal case, assuming that the fall was responsible for the apoplexy. For a sudden and temporary physical disturbance like the fainting spell is properly not a disease. *Manufacturer's Accident Indemnity Co.* v. *Dorgan*, 58 Fed. 945, 955; *Meyer* v. *Fidelity & Casualty Co.*, 96 Iowa 378, 65 N. W. 328. The death seems no less accidental

on the assumption that the excitement produced the apoplexy. In a sense, deliberately witnessing an accident is not an accident, and the natural excitement of such an occasion is perhaps not accidental. Nevertheless the fatal physical reactions were induced not by forces arising primarily within the system, but by something external, by a violent spectacle which affected the beholder in a most abnormal and improbable way. See *Yates* v. *South Kirby, etc. Collieries Ltd.*, [1910] 2 K. B. 538. Though the outside occurrence operated in mental channels rather than by direct physical contact, the unexpected effect should not be deemed any less an accident. And so it seems to have been held. *McGlinchy* v. *Fidelity & Casualty Co.*, 80 Me. 251, 14 Atl. 13; *Pugh* v. *London, B. & S. C. Ry. Co.*, [1896] 2 Q. B. 248.

LEGACIES AND DEVISES — DISCLAIMER BY PAROL. — A testatrix, survived by sons and daughters, had devised and bequeathed her entire estate to the daughters. Shortly after her death the will was destroyed by the sons in the presence of the daughters and without objection on their part. Within a few days the daughters, without consideration, signed an informal writing waiving all rights under the will. They now sue for their interest thereunder. *Held*, that they cannot recover. *Dueringer* v. *Klocke*, 86 Misc. (N. Y.) 404, 149 N. Y. Supp. 332.

The decision takes the ground that the destruction of the will was a valid disclaimer, of which the written waiver was only a memorandum. In this country a parol disclaimer by a devisee or legatee is effective. *Defreese* v. *Lake*, 109 Mich. 415, 67 N. W. 505; *Wonsetler* v. *Wonsetler*, 23 Pa. Super. Ct. 321; *Tarr* v. *Robinson*, 158 Pa. 60. *Contra*, *Bryan* v. *Hyre*, 1 Rob. (Va.) 94. The law is probably the same in England, but the point has not been definitely decided. See *Townson* v. *Tickell*, 3 B. & Ald. 31, 38; *Doe d. Smyth* v. *Smyth*, 6 B. & C. 112, 117; SHEPPARD'S TOUCHSTONE, 452; 4 KENT, COMMENTARIES, 534. *Bryan* v. *Hyre*, *supra*, is often cited for the proposition that a disclaimer of realty can only be effected by deed, but the case merely upheld a charge that such disclaimer must be in writing. There is no modern authority to support that decision, although the ancient rule was that a disclaimer must be by matter of record. See *Butler and Baker's Case*, 3 Coke 25, 26 *a*; 8 VIN. ABR., DISAGREEMENT. Whether a given set of acts constitutes a disclaimer is a question of fact. *Defreese* v. *Lake*, *supra*. And the renunciation must be unequivocal. *Webster* v. *Gilman*, Fed. Cas., No. 17,335. The principal case is clearly correct, although on the ground taken by the court, that the destruction of the will alone constituted a disclaimer, it is arguable that the question should have been left to the jury. A devisee's or legatee's situation is to be distinguished from an heir's, for when property passes by descent, title vests without any possibility of renunciation. *Watson* v. *Watson*, 13 Conn. 83.

LIMITATION OF ACTION — NATURE AND CONSTRUCTION OF STATUTE — LEGAL DISABILITY: WHETHER PLAINTIFF'S PROOF IN BANKRUPTCY STOPS RUNNING OF STATUTE. — A creditor whose right accrued just before the debtor's bankruptcy in 1904 proved his claim in bankruptcy and was paid dividends upon it. In 1908 he brought suit in the state court, and this action was continued until in 1910 the debtor's application for a discharge in bankruptcy was refused. The period of limitation under the state statute was three years, but any person under a legal disability might bring an action within a year after the disability was removed. *Held*, that the plaintiff's action is barred. *Simpson* v. *Tootle, etc. Co.*, 32 Am. B. R. 551 (Okla.).

Whether the pendency of bankruptcy proceedings against a defendant constitutes a legal disability upon the plaintiff has not been decided previously under the present bankruptcy act. Under the law of 1867 a creditor who